

McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
James P. Wagoner, #58553
Kevin D. Hansen, #119831
Brandon M. Fish, #203880
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300

Attorneys for Plaintiff New York Marine
and General Insurance Company

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

KINSALE INSURANCE COMPANY,

Defendant.

NEW YORK MARINE AND
GENERAL INSURANCE COMPANY,
a Delaware corporation,

Plaintiff,

v.

KINSALE INSURANCE COMPANY,
an Arkansas corporation,

Defendant.

TRC OPERATING COMPANY, INC.,
a California corporation, TRC
CYPRESS GROUP, LLC, a California
Limited Liability Company,

Real Parties in Interest.

Case No. 1:20-cv-00967-NONE-JLT

Consolidated With Case No. 1:20-cv-
01085-NONE-JLT

**STIPULATION AND [PROPOSED]
ORDER EXTENDING DEADLINES
SET IN SCHEDULING ORDER**

(Doc. 16)

1 Pursuant to Eastern District of California Local Rule 143, Plaintiff St. Paul Fire
2 and Marine Insurance Company (“St. Paul”), Plaintiff New York Marine and General
3 Insurance Company (“New York Marine”), Defendant Kinsale Insurance Company
4 (“Kinsale”), Real Parties in Interest TRC Operating Company, Inc. and TRC Cypress
5 Group, LLC (collectively referred to as the “TRC Entities”) (St. Paul, New York
6 Marine, Kinsale and the TRC Entities are collectively referred to as the “Parties”), by
7 and through their undersigned counsel, hereby stipulate as follows:

8 WHEREAS, on July 17, 2014, the underlying case related to this matter was
9 filed in Kern County Superior Court by TRC Operating Company, Inc. and TRC
10 Cypress Group, LLC against Chevron U.S.A., Inc. (“Chevron”) on July 17, 2014,
11 entitled *TRC Operating Co. v. Chevron*, Kern County Case No. S-1500-CV-282520-
12 DRL (“*TRC v. Chevron*”);

13 WHEREAS, on May 18, 2017, Chevron filed a Cross-Complaint in *TRC v.*
14 *Chevron* against the TRC Entities which alleges claims against TRC for negligence,
15 trespass, and private nuisance;

16 WHEREAS, on February 15, 2012, Travelers issued policy no. ZPP 12R72162
17 to TRC for the policy period of February 15, 2012 to February 15, 2013, which was
18 subsequently renewed on February 15, 2013 for the policy period of February 15,
19 2013 to March 17, 2013;

20 WHEREAS, on March 17, 2014, New York Marine and General Insurance
21 Company issued Commercial General Liability Policy No. PK201400004061 to TRC
22 for the policy period of March 17, 2014 to March 17, 2015, which was subsequently
23 renewed on March 17 of 2015, 2016, and 2017, ultimately extending the policy period
24 to March 17, 2018;

25 WHEREAS, on March 17, 2013, Kinsale issued Commercial General Liability
26 Policy No. 0100010677-0 to Named Insured TRC Operating Company, Inc. for the
27 policy period of March 17, 2013 to March 17, 2014;

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1 WHEREAS the Parties are informed and believe that non-party Lexington
2 Insurance Company (“Lexington”) issued Commercial General Liability Policy No.
3 553-9172-0015 to Named Insured TRC Operating Company, Inc., effective April 1,
4 1996 to April 1, 1997, which was subsequently renewed under Policy No. 553-9172-
5 0016, effective April 1, 1997 to April 1, 1998 (the “Lexington Policy”); and

6 WHEREAS the Parties are informed and believe that non-party Lexington may
7 have issued a renewal of its Commercial General Liability Policy to TRC Operating
8 Company, Inc., effective April 1, 1998 to April 1, 1999, but that Lexington claims
9 that this Policy cannot be located (the “Disputed Lexington Policy”); and

10 WHEREAS, by an undated letter, Travelers extended a defense to TRC to the
11 cross-complaint in *TRC v. Chevron*, subject to a reservation of rights, and is currently
12 providing such a defense;

13 WHEREAS, by letter dated May 24, 2018, New York Marine extended a
14 defense to TRC to the cross-complaint in *TRC v. Chevron*, subject to a reservation of
15 rights, and is currently providing such a defense;

16 WHEREAS, Kinsale is not defending TRC in connection with *TRC v. Chevron*,
17 in line with Kinsale’s denial of coverage of the matter in a letter to TRC dated January
18 22, 2018;

19 WHEREAS, on July 10, 2020, St. Paul Fire initiated this action (Case No. 1:20-
20 cv-00967-NONE-JLT) by filing its Complaint against Kinsale alleging causes of
21 action for declaratory relief, equitable contribution, equitable indemnity, and
22 equitable subrogation in connection with Kinsale’s refusal to participate in the defense
23 of the TRC Entities in *TRC v. Chevron*;

24 WHEREAS, on August 5, 2020, New York Marine filed a Complaint against
25 Kinsale in Case No. 1:20-cv-01085-NONE-JLT alleging causes of action for
26 declaratory relief, equitable indemnity, equitable contribution, and equitable
27 subrogation against Defendant Kinsale in connection with Kinsale’s refusal to
28 participate in the defense of the TRC Entities in *TRC v. Chevron*; and

1 WHEREAS by letter dated November 6, 2020, Lexington issued a reservation
2 of rights letter offering to participate in the defense to TRC in *TRC v. Chevron*, subject
3 to a reservation of rights, but has not yet made payments toward defense fees and
4 costs; and

5 WHEREAS, on February 2, 2021, the Court issued an Order granting the
6 stipulation to consolidate cases numbered 1:20-cv-01085 NONE JLT and 1:20-cv-
7 00967 NONE JLT, with the scheduling order issued in Case No. 1:20-cv-01085
8 NONE JLT controlling the consolidated action;

9 WHEREAS, on November 6, 2020, the Court issued a Scheduling Order in this
10 case, which, among other things, establishes the deadlines for discovery, non-
11 dispositive motions, dispositive motions, and the final pre-trial conference in this case
12 (“Scheduling Order”);

13 WHEREAS, at the time that the Scheduling Order was issued on November 20,
14 2020, the trial in *TRC v. Chevron* was scheduled to start on March 15, 2021;

15 WHEREAS, *TRC v. Chevron* is currently pending and is scheduled to
16 commence trial on August 2, 2021; and

17 WHEREAS, St. Paul and New York Marine believe that certain coverage
18 issues presented in this action and the damages claimed by St. Paul and New York
19 Marine will be materially affected by the outcome of *TRC v. Chevron* and therefore
20 will not be set until there is a judgment in *TRC v. Chevron*, or that action is otherwise
21 resolved; and

22 WHEREAS, significant discovery will need to be taken after the trial of the
23 *TRC v. Chevron* Action, including review and analysis of the trial transcript thereof,
24 the evidence presented, the damages being claimed, the verdict reached by the jury,
25 if any, and the judgment, if any, which cannot be completed under the existing
26 deadlines set forth in the Scheduling Order; and

27 WHEREAS, it is anticipated that renewed concerns about the delta variant of
28 the COVID-19 virus, which is rapidly spreading throughout California, including

1 recent reintroduction of mask mandates due to rising infection rates in Los Angeles
2 County and elsewhere, will cause further delays in discovery, law and motion activity,
3 and participation of counsel in the within litigation;

4 THEREFORE, based on the foregoing, the Parties hereby stipulate and agree,
5 and respectfully request that the Court order the following:

6 1. The deadline to disclose all expert witnesses set by the Scheduling Order
7 shall be extended by 120 days from July 30, 2021 to November 29, 2021 (the 120th
8 day from July 30, 2021 is a Saturday, date extended to the following Monday).

9 2. The deadline to disclose all rebuttal expert witnesses set by the
10 Scheduling Order shall be extended by 120 days from August 27, 2021 to December
11 27, 2021 (the 120th day from August 27, 2021 is a Saturday, date extended to the
12 following Monday).

13 3. The non-expert discovery deadline set by the Scheduling Order shall be
14 extended by 120 days from September 10, 2021 to January 10, 2022 (the 120th day
15 from September 10, 2021 is a Saturday, date extended to the following Monday).

16 4. The expert discovery deadline set by the Scheduling Order shall be
17 extended by 120 days from September 24, 2021 to January 24, 2022 (the 120th day
18 from September 24, 2021 is a Saturday, date extended to the following Monday).

19 5. The non-dispositive motion filing deadline set by the Scheduling Order
20 shall be extended by 120 days from October 7, 2021 to February 4, 2022.

21 6. The non-dispositive motion hearing deadline set by the Scheduling Order
22 shall be extended by 120 days from November 4, 2021 to March 4, 2022.

23 7. The dispositive motion filing deadline set by the Scheduling Order shall
24 be extended by 120 days from October 7, 2021 to February 4, 2022.

25 8. The dispositive motion hearing deadline set by the Scheduling Order on
26 shall be extended by 120 days from November 18, 2021 to March 18, 2022.

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1 9. The final pre-trial conference date set by the Scheduling Order shall be
2 extended by 120 days from January 13, 2022 to May 13, 2022.

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4 Dated: July 26, 2021

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

5
6 By: 

James P. Wagoner

Kevin D. Hansen

Brandon M. Fish

Attorneys for Plaintiff New York Marine and
General Insurance Company

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9
10
11 Dated: July ___, 2021

NEMECEK & COLE

12
13 By: _____

Matthew J. Hafey

Gail Orr

Attorneys for Defendant Kinsale Insurance
Company

14
15
16
17 Dated: July ___, 2021

PLEDGER LAW, PC

18
19 By: _____

Jean M. Pledger

Attorneys for Real Parties in Interest TRC
Operating Company, Inc. and TRC Cypress
Group, LLC

1 Dated: July __, 2021

MORALES FIERRO & REEVES

2
3 By: _____

4 William C. Reeves

5 Attorneys for Plaintiff St. Paul Fire and Marine
6 Insurance Company
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[PROPOSED] ORDER

Based upon the stipulation of the parties, the Court **ORDERS** the case schedule amended as follows:

1. The parties SHALL disclose their expert witnesses no later than November 29, 2021.
 2. The parties SHALL disclose any rebuttal expert witnesses no later than December 27, 2021.
 3. The parties SHALL complete all non-expert discovery no later than January 10, 2022.
 4. The parties SHALL complete all expert discovery no later than January 24, 2022.
 5. The parties SHALL file non-dispositive motions, if any, no later than February 4, 2022 to be heard no later than March 4, 2022.
 7. The parties SHALL file dispositive motions, if any, no later than February 4, 2022 to be heard no later than March 18, 2022.
 9. The pre-trial conference is CONTINUED to May 13, 2022.
- The Court does not anticipate again extending these deadlines.

IT IS SO ORDERED.

Dated: **July 28, 2021**

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE